

## **REMARKS**

### **REVIEW**

The current application sets forth claims 1 through 17 of which claim 1 is the only independent claim. Presently, no claims have been indicated as allowed in view of the prior art. Claims 4, 8, 9, 12, 13, and 17 stand objected to as being dependent on a rejected base claim, but would be allowable if rewritten in independent form including all the limitations of the base claim and any intervening claims.

Claims 1 through 3, 5 through 7, 11, 14, 15 stand collectively rejected under 35 U.S.C. §103(a) as unpatentable over *Gies et al.* (U.S. Patent No. 5,355,910) in view of *Klomhaus et al.* (U.S. Patent No. 5,194,038). Claim 16 stands rejected under 35 U.S.C. §103(a) as unpatentable over *Gies et al.* in view of *Klomhaus et al.* and in further view of *Barton* (U.S. Pat. No. 6,210,266). Finally, Claim 10 stands rejected under 35 U.S.C. §103(a) as unpatentable over *Gies et al.* in view of *Klomhaus et al.*, and in further view of *Opperman et al.* (U.S. 6,609,535).

### **TELEPHONE INTERVIEW**

Applicant gratefully acknowledges the Examiner's granting of an interview which was conducted on October 13, 2005 by telephone with the attorney of record and the inventor. Applicant set forth reasons of disagreement with the assertion that the *Gies et al.* and *Klomhaus et al.* render the present claims obvious. Examiner acknowledged that although *Gies et al.* teaches a flap valve where the flap structure is a rigid layer overlaying a flexible layer, the flap is not biased to a closed position by any mechanism, and therefore must close through the force of gravity.

Examiner also acknowledged that the flap disclosed by *Klomhaus et al* was biased closed by the use of a connecting portion of material and that the flap was not a two layer structure.

### **35 U.S.C. §103(a) REJECTIONS**

In view of the above amendments, Applicant respectfully traverses such grounds of rejection. An invention is only obvious under 35 U.S.C. §103(a) if "the subject matter **as a whole** would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains." 35 U.S.C. §103(a) (*Emphasis added*). The task of proving obviousness is not merely establishing that all of the elements of a claimed invention would have been obvious. It must be shown that the particular combination of elements used to form the **whole** invention would have been obvious. There must be some suggestion, incentive, or motivation to combine the elements **in the manner** as in the claimed invention.

Examiner has not established a prima facie case of obviousness. In order to establish a prima facie case of obviousness under 35 U.S.C. § 103, three criteria must be met. First, there must be some suggestion or motivation, either in the references themselves, or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. *See* MPEP § 706.02(j). Second, there must be a reasonable expectation of success. *Id.* Finally, the prior art reference (or references when combined) must teach or suggest all of the claim limitations. *Id.*

Claims 1 through 3, 5 through 7, 11, 14, and 15

By relying on rejection grounds under 35 U.S.C. §103(a) for alleged obviousness, and by various statements throughout the detailed Office Action, the PTO already acknowledges certain important deficiencies in *Gies et al.* The valve taught by *Gies et al.* includes a flap comprised of two layers, a relatively flexible layer and two strips of relatively rigid plastics material. Col. 1, ll. 25–48. One of the plastic strips is used as a mounting strip to aid in securing the flap to the valve frame. ll. 39-44; Col. 3, ll. 52-55. The second plastic strip is affixed to the lower portion of the flexible layer with a gap in between the first and second strips. Col. 1, ll. 44-49; Col. 4, ll. 8-14. The gap allows a hinging motion of the flap. The purpose of the second strip is to prevent warping or deformation of the flexible layer. Col. 1, ll. 53-55; Col. 4, ll. 18-20. The valve in *Gies et al.* also teaches that the flap is designed to close under the influence of gravity. Col. 3, ll. 33-36. The structure described in *Gies et al.* would not close properly in any other orientation. In other words, if the valve of *Gies et al.* were installed upside down, the flap would fall open and remain open.

The valve taught by *Klombaugh et al.* does not disclose a relatively rigid layer that operates to close the flap irrespective of gravity. Instead, the valve is closed using a biasing element (called a “connecting portion”). Col. 2, ll. 42-63; Fig. 4, No. 44. This connecting portion is not described or shown to be a layer, as claimed in the present application. Instead, it is shown in the figures to be a portion of u-shaped material from which extends the flap. The flap is described as being molded integrally with the frame having the connecting portion in between, and the flap is molded such that it is initially horizontal and in the forward area of the valve. Col. 2, ll. 48-57; Figs. 3-5, Nos. 44, 38a. It is the bending of the flap in response to air pressure against this “connecting portion” (it is also referred to as a “flap portion”) that operates to close the flap. *See*, Col. 2, ll. 61-63.

Respectfully, examiner has not presented sufficient grounds for establishing a *prima facie* case of obviousness. First, as is required by MPEP §706.02(j), there must be some suggestion or motivation to combine the references. There can be no suggestion or motivation to combine references where there would require substantial redesign of the references to achieve the claimed invention. *In re Ratti*, 270 F.2d 810, 123 USPQ2d 349, 352 (C.C.P.A. 1959) Would *Gies et al* and *Klomhaus et al* to be combined as proposed, the two rigid layers of *Gies et al* would have to be connected and a u-shaped connection portion, from *Klomhaus et al* would need to be placed above the portion where the living hinge area is in order to bias the flap toward the passageway. This is a substantial redesign of *Gies et al*. Furthermore, since *Gies et al* requires the valve to have a gap between the rigid layers, combining *Gies et al* with *Klomhaus et al* would necessarily change the operating principles of the *Gies et al* flap valve. Therefore, there is no motivation to combine the references.

Moreover, the combination of *Gies et al* and *Klomhaus et al* would not result in the present invention as claimed. While arguably there would result a flap with a flexible layer and a rigid layer, the rigid layer would not through its own, unmodified structure, operate to close the flap. Closing of the flap would occur as a result of the bias of against opening caused by the position of the u-shaped connection portion. Therefore, the proposed combination does not teach all of the elements of the claimed invention, as is required under the MPEP. As such, Claims 1-3, 5-7, 11, 14 and 15 are allowable over the references cited. Since Claims 10 and 16 depend from allowable claims, they are likewise allowable for the same reasons. As such, it is believed that all of the outstanding 35 U.S.C. §103(a) rejections are traversed and their withdrawal is earnestly solicited.

**CITED RELEVANT PRIOR ART**

It is not believed that any of the prior art cited but not relied upon, alone or in combination either with each other or other cited prior art teaches, discloses, suggests or makes obvious the claimed features of the present invention.

**CONCLUSION**

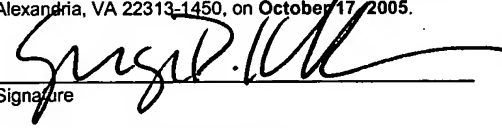
In view of the foregoing comments, Applicants respectfully request withdrawal of the current grounds of rejection and the issuance of a formal Notice of Allowance. The Examiner is invited to telephone the undersigned at his convenience should only minor issues remain after consideration of this amendment in order to permit early resolution of the same.

Respectfully submitted,

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